

IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:

PETITION FOR EXEMPTION OF
CERTAIN SERVICES

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T.R.A. DOCKET ROOM
DOCKET NO. 03-00391

**CONSUMER ADVOCATE AND PROTECTION DIVISION'S
RESPONSES TO BELL SOUTH TELECOMMUNICATIONS, INC.'S
FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Comes now Paul G. Summers, Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), and hereby submits the following responses to the first set of discovery requests propounded by BellSouth Telecommunications, Inc. ("BellSouth"):

1. Please identify each fact witness you intend to present in this docket and, for each, please state:

- a) the subject or subjects upon which the witness will testify;
- b) the basis of the witness' personal knowledge of the matter regarding which witness will testify; and
- c) all facts of which the witness is aware that support the witness' testimony.

Response: The Consumer Advocate objects to this interrogatory on the ground that it is not required to provide a witness list with summaries. *See Strickland v. Strickland*, 618 S.W.2d 496, 499 (Tenn. Ct. App. 1981). Without waiving its objection, the Consumer Advocate responds as follows:

Through investigation and discovery, the Consumer Advocate is in the midst of its review and analysis of this docket. The Consumer Advocate has not identified any persons who may have discoverable factual information. In accordance with Tenn. R. Civ. P. 26, the Consumer Advocate will supplement this response as necessary to identify persons who may have discoverable factual information but will not provide a witness list with summaries.

2. Please identify each expert witness you intend to present in this docket and, for each, please state:

- a) the subject or subjects upon which the expert will testify;**
- b) the basis for your assertion that the witness is qualified as an expert including, but not limited to, a current curriculum vitae;**
- c) all tests, studies, measurements, experiments, or other analysis or actions performed or observed by the expert relating to the expert's testimony;**
- d) all opinions that the expert will present in this docket and the basis for each opinion; and**
- e) all facts of which you or the expert are aware that support those opinions.**

Response: Through investigation and discovery, the Consumer Advocate is in the midst of its review and analysis of this docket. Accordingly, the Consumer Advocate has not identified the expert witness(es) that it may present in this docket or determined the subject(s) or opinion(s) upon which such witness(es) may testify. In accordance with Tenn. R. Civ. P. 26, the Consumer Advocate will supplement this response as necessary to identify each person whom the Consumer Advocate expects to call as an expert witness at trial, the subject matter on which the expert is expected to testify, and the substance of the facts and opinions to which the expert is expected to testify and a

summary of the grounds for each opinion.

3. Please state whether you will contend in this docket that PRI service is not sufficiently competitive in Tennessee to qualify for exemption under T.C.A. § 65-5-208(b), and if you will contend such, state all bases upon which you will make such contention, and all facts which you believe support such contention.

Response: The Consumer Advocate has not completed its discovery and investigation into the issue of whether PRI service is sufficiently competitive in Tennessee to qualify for exemption under Tenn. Code Ann. § 65-5-208(b). In accordance with Tenn. R. Civ. P. 26, the Consumer Advocate will supplement this response as necessary once it concludes its review and analysis.

4. Please state whether you agree that competition for PRI services in Tennessee is an effective regulator of price for PRI service, and if you do not agree, please state why you do not agree and all facts that you believe support your position.

Response: The Consumer Advocate has not completed its discovery and investigation into the issue of whether competition is an effective regulator of price for PRI services. In accordance with Tenn. R. Civ. P. 26, the Consumer Advocate will supplement this response as necessary once it concludes its review and analysis.

5. Please identify all ways in which you believe exempting PRI service from tariff requirements would cause harm to any end-user in Tennessee and for each way identified, please explain:

- a) the basis for your belief;**
- b) any example of such harm being caused anywhere else in the United States;**
- c) how likely you believe that harm would be to occur.**

Response: Telecommunications tariffs are important because they embody the prices, terms and conditions of wholesale and retail services and products and, accordingly, are central to effectuating the statutes, regulations and policies applicable to the tariffed subject matter. In particular, the complete removal of tariffing requirements for PRI services would frustrate the achievement of the following law and policy:

1. Resale of PRI service at wholesale discounts off the retail tariffed rate. Federal law requires incumbent carriers such as BellSouth, Citizens Telecommunications Company of Tennessee, LLC ("Citizens"), and United Telephone-Southeast, Inc. ("United") to offer PRI services to competitors at wholesale rates established by the TRA. *See* 47 U.S.C.A. §§ 251(c)(4) and 252(d)(3). In establishing its resale rules, the Federal Communications Commission recognized that the incumbent carrier's underlying retail tariffs constitute a key component of the federal resale system. *See Local Competition Order* at ¶¶ 872, 939, 953. Additionally, in establishing the wholesale rate for the retail service offerings of BellSouth and United, the TRA ordered that "the wholesale discount be, and hereby is, established as a set percentage off the tariffed rates". *Avoidable Costs Order* at 7.

2. Prohibition against anti-competitive conduct. In an effort to open telecommunications markets to competition, both Congress and the General Assembly have passed legislation declaring pro-competitive policies. Federal Telecommunications Act of 1996; Tennessee Telecommunication Reform Act of 1995. Laws that advance and sustain viable competition in telecommunications markets, including the PRI service market, are central components of these legislative initiatives. *See* 47 U.S.C.A. §§ 251, 252, 253, 271, and 272; Tenn. Code Ann. § 65-5-208(c) & (d). Tariffs define the relationship between the company and its customers, which is a key concern in dealing

with anti-competitive issues. Accordingly, tariffs are an integral part of any anti-competitive claim and of an agency or court's oversight of potential anti-competitive conduct or practices.

3. Prohibition against the application of unjustly discriminatory rates. Both federal and state law prohibit the application of unjustly discriminatory rates and terms among similarly situated customers. *See* 47 U.S.C.A. §§ 201 and 202; Tenn. Code Ann. §§ 65-4-115, 65-4-122. Because tariffs set out the generally applicable rates and terms of service, they are essential to the fulfillment of the policy objectives expressed in these statutes. *See* 64 Am. Jur. 2d *Public Utilities* § 62 (Filed Rate Doctrine).

4. Notice and information provided to consumers through published tariffs. Tariffs provide published information that consumers may find valuable, including, pursuant to current tariffing requirements, advanced notice of changes in the rates, terms and conditions of service. Moreover, a tariff is a binding service contract between the company and the customer, and the current tariffing process helps assure that objective, transparent information is provided regarding the company-customer relationship. Thus, tariffing requirements allow consumers, regulators and the company to reach a clearer understanding of the service arrangement and the consideration exchanged. Accordingly, preservation of an open tariff process facilitates the speedy and satisfactory resolution of consumer complaints. Elimination of current tariffing requirements therefore would remove beneficial consumer information from the public domain.

All of the laws and policies discussed above regarding resale, competition, discrimination and published information are designed to benefit and protect the interests of consumers. Tariffing requirements help assure that these pro-consumer initiatives remain in place, and only after such requirements are abrogated will the benefits of these consumer-oriented initiatives be lost.

6. Please identify and describe with specificity any way in which you believe that the market in Tennessee for PRI service is different than the market in other states for PRI service.

Response: The Consumer Advocate objects to this interrogatory on the ground that it is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this docket. In particular, potential differences between the PRI service market in Tennessee and the PRI service market in other states have no bearing on whether PRI service should be exempted from certain regulatory requirements pursuant to Tenn. Code Ann. § 65-5-208(b).

7. Please state the number of end-user complaints regarding pricing of PRI service in Tennessee that you have received, and for each such complaint identify the name of the complaining end-user, the approximate date of the complaint, and the nature of the complaint.

Response: The Consumer Advocate is not a complaint-clearing agency, nor does it represent individual consumers before any court, agency or judicial tribunal. Accordingly, the Consumer Advocate generally does not take individual consumer complaints. In instances where individual consumers contact the Consumer Advocate directly regarding complaints involving Tennessee utility matters, the Consumer Advocate generally refers the consumer to the following agencies:

Tennessee Division of Consumer Affairs
500 James Robertson Parkway
Nashville, Tennessee 37243
(615) 741-4737

Tennessee Regulatory Authority
Consumer Services Division
460 James Robertson Parkway
Nashville, Tennessee 37243
(615) 741-2904

The Consumer Advocate is not aware of any communications or documents in its possession referring or relating to end-user complaints regarding pricing of PRI service in Tennessee, nor does the Consumer Advocate maintain records regarding the nature of referrals of individual consumer matters to other agencies.

8. Please identify any Federal rule, order or regulation which you believe is relevant or analogous in any way to exemption of PRI services in Tennessee.

Response: PRI services are classified as “telecommunications services” under federal law. Accordingly, all federal rules, orders and regulations affecting telecommunications services are relevant to a carrier’s provisioning of PRI services in Tennessee. The Consumer Advocate maintains that all such federal rules, orders and regulations must remain in full force and effect after the completion of this docket, and that the relief sought or granted in this docket cannot either directly or impliedly abrogate or in any fashion effectively undermine any such rule, order or regulation.

9. Please identify all services that you believe provide end users with similar functionality to that provided by PRI.

Response: The Consumer Advocate objects to this interrogatory on the ground that it is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this docket. In particular, potential differences between PRI service and other services that may provide end users with similar functionality to that provided by PRI have no bearing on whether PRI service should be exempted from certain regulatory requirements pursuant to Tenn. Code Ann. § 65-5-208(b). The Consumer Advocate further objects to this interrogatory on the ground that it is vague, overly broad, imprecise, or uses terms that are subject to multiple interpretations. In particular, the term “similar functionality” is not properly defined or explained


for purposes of this interrogatory.

10. Please identify and produce all documents to which you have referred or on which you have relied to answer the foregoing interrogatories.

Response: There are no responsive documents.

RESPECTFULLY SUBMITTED,

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Dated: August 16, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via facsimile and first-class U.S. Mail, postage prepaid, on August 16, 2004, upon:

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